

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

MELVIN BETHUNE,	:	
Petitioner,	:	Case No. 3:12-CV-817
v.	:	
	:	(Judge Kosik)
SUPERINTENDENT MICHAEL WENEROWICZ and PA STATE ATTORNEY GENERAL,	:	
Respondents.	:	

FILED  
SCRANTON  
DEC 13 2012  
PER *[Signature]*  
DEPUTY CLERK

ORDER

AND NOW, THIS 13<sup>th</sup> DAY OF DECEMBER, 2012, IT APPEARING TO  
THE COURT THAT:

- (1) Petitioner, Melvin Bethune, filed the above-captioned petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 on May 2, 2012;
- (2) The action was assigned to Magistrate Judge Malachy E. Mannion for Report and Recommendation;
- (3) On October 31, 2012, the Magistrate Judge issued a Report and Recommendation (Doc. 8) wherein he recommended that the petition for writ of habeas corpus be dismissed as a second or successive petition pursuant to 28 U.S.C. §2244 (b)(3)(A);
- (4) As the Magistrate Judge points out, on September 23, 2003, Petitioner filed a previous habeas corpus petition with this court challenging the same conviction raised in the instant petition (No. 3:CV-03-1667);
- (5) Petitioner's previous petition was denied by the court in an Order adopting a Report and Recommendation of the Magistrate Judge on November 19, 2004. A request for a certificate of appealability was denied by the United States Court of Appeals for the Third Circuit on May 25, 2005;

IT FURTHER APPEARING THAT:

(6) Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2254 (a), §2244 (b)(1), before a district court can entertain a petitioner's second §2254 petition, it must receive an Order from the Court of Appeals authorizing the district court to consider the petition (28 U.S.C. §2244 (b)(3)(A));

(7) There is no indication in the record that petitioner sought authorization from the Court of Appeals for the Third Circuit prior to filing the second petition;

(8) On November 13, 2012, petitioner filed an objection to the Report and Recommendation of the Magistrate Judge (Doc. 9) wherein he requests this court to transfer his petition to the Third Circuit Court of Appeals citing LAR 22.0;

(9) We will deny petitioner's request to transfer; however, petitioner is free to file an application in the Court of Appeals in accordance with LAR 22.5;

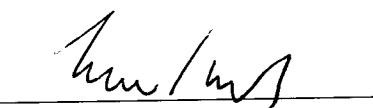
ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated October 31, 2012 (Doc. 8) is **ADOPTED**;

(2) The petition for writ of habeas corpus is **DISMISSED** as a second or successive petition;

(3) The Clerk of Court is directed to **CLOSE** this case; and,

(4) Based on the court's conclusions herein, there is no basis for the issuance of a certificate of appealability.



Edwin M. Kosik  
United States District Judge